



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

EPA-R08-OAR-2014-0713; FRL- 9917-20-Region-8

**Approval and Promulgation of Air Quality
Implementation Plans; Montana; Revisions to Administrative Rules of Montana -
Prevention of Significant Deterioration**

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Montana on June 4, 2013. This SIP revision revises the Administrative Rules of Montana that pertain to the issuance of Montana air quality permits. The June 4, 2013 revisions contain amended and renumbered rules. In this proposed rulemaking, we are taking action on portions of the June 4, 2013 submittal. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: Comments must be received on or before [insert date 30 days after publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2014-0713, by one of the following methods:

- www.regulations.gov. Follow the on-line instructions for submitting comments.
- E-mail: leone.kevin@epa.gov
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER**

INFORMATION CONTACT if you are faxing comments).

- Mail: Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- Hand Delivery: Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R08-OAR-2014-0713.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special

characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly-available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air Program, Mailcode 8P-AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6227, or leone.kevin@epa.gov.

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Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The initials ARM mean or refer to the Administrative Rules of Montana.
- (iii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (iv) The initials MDEQ mean or refer to the Montana Department of Environmental Quality.
- (v) The initials NO_x mean or refer to nitrogen oxides.
- (vi) The initials NSR mean or refer to New Source Review.
- (vii) The initials PSD mean or refer to Prevention of Significant Deterioration.
- (viii) The initials SIP mean or refer to State Implementation Plan.
- (ix) The initials SO₂ mean or refer to sulfur dioxide.
- (x) The words State or Montana mean the State of Montana, unless the context indicates otherwise.

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov

or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- b. Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- d. Describe any assumptions and provide any technical information and/or data that you used.
- e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- f. Provide specific examples to illustrate your concerns, and suggest alternatives.
- g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- h. Make sure to submit your comments by the comment period deadline identified.

II. What is Being Addressed in this Document?

EPA is proposing to approve (with one exception) the revisions to Title 17, Chapter 8, subchapter 8 of the Administrative Rules of Montana (ARM) submitted by the State on June 4, 2013, that relate to the State's prevention of significant deterioration (PSD) program. The revisions to the State PSD SIP were adopted by the Montana Department of Environmental Quality (MDEQ) on September 27, 2012, and became effective October 12, 2012.

Specifically, the submittal contains revisions to ARM 17.8.801 (Definitions) and 17.8.818 (Review of Major Source and Major Modifications – Source Applicability and Exemptions) to include nitrogen oxides (NO_x) as an ozone precursor pollutant for reviewing major stationary sources of air pollutants and to amend portions of the SIP for consistency of language when referring to sulfur dioxide (SO₂) and NO_x. The submittal also corrected an error in an August 15, 2012 submittal regarding the treatment of fine particulate matter (PM_{2.5}). We have not acted on the August 15, 2012 submittal; EPA will act on the correction in the June 4, 2013 submittal in tandem with our future action on the August 15, 2012 submittal.

On November 29, 2005, EPA published the “Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standards – Phase 2” in 70 FR 71612 (“Phase 2 Ozone Implementation Rule”). This regulation required revisions to state programs for major source permitting. One of the requirements in EPA regulations was to address ozone formation by regulating precursor pollutants (see 40 CFR 51.166(b)(49)(i) and 52.21(b)(50)(i)). “Precursor pollutants” are pollutants that combine to form another pollutant; NO_x reacts with volatile organic compounds to form ozone. In the Phase 2 Ozone Implementation Rule, EPA identified

NO_x as an ozone precursor pollutant in attainment and unclassifiable areas. Accordingly, the Phase 2 Ozone Implementation Rule amended the definition of “major stationary source,” “major modification,” “significant,” and “regulated NSR pollutant” to include NO_x as an ozone precursor¹.

In a November 29, 2005, final rule (Approval and Disapproval and Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards; Montana), EPA disapproved a Montana SIP revision because we found Montana’s PSD rules for ozone inadequate because the rules did not address NO_x as an ozone precursor pollutant as required by the Phase 2 Ozone Implementation Rule. 76 FR 28934. This disapproval started a FIP clock, and as we are now proposing to approve Montana’s June 4, 2013, submittal, this would cure the deficiency identified in our prior disapproval and extinguish our FIP obligations because the proposed amendments in this notice would address EPA’s concerns and make Montana’s rules for PSD permitting adequate to implement the 1997 8-hour ozone NAAQS.

III. What is the State Process to Submit These Materials to EPA?

Section 110(k) of the CAA addresses EPA’s actions on submissions of revisions to a SIP. The CAA requires states to observe certain procedural requirements in developing SIP revisions for submittal to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a state to EPA. The MDEQ held a public hearing on July 12, 2012 to propose revisions

¹ See 40 CFR 51.166(b)(1)(ii), (b)(2)(ii), (b)(23), and (b)(49). See also 40 CFR 52.21(b)(1)(ii), (b)(2)(ii), (b)(23), and (b)(50). EPA also amended the footnote to 40 CFR 51.166(i)(5)(i)(e) (40 CFR 51.166(i)(5)(i)(f) in the current CFR) and 40 CFR 52.21(i)(5)(i) to require sources with a net increase of 100 tons per year or more of NO_x to perform an ambient impact analysis.

consistent with the Phase 2 Ozone Implementation Rule at 70 FR 71612 in its regulations at ARM 17.8. The Governor submitted these SIP revisions to EPA on June 4, 2013.

We have evaluated the Governor's submittal of the PSD SIP revisions and have determined that the State met the requirements for reasonable notice and public hearing under Section 110(a)(2) of the CAA.

IV. What are the Changes that EPA is Proposing to Approve?

EPA is proposing to approve revisions to the Montana SIP that would bring the State PSD program provisions into conformance with the requirements of the Phase 2 Ozone Implementation Rule.

Generally, the proposed amendments to the Montana SIP would add NO_x as a regulated ozone precursor pollutant for purposes of PSD. The MDEQ and applicants for permits to construct or modify major sources would be required to analyze the applicability of PSD requirements for ozone based on a source's NO_x emissions. The following are descriptions of the proposed amendments:

ARM 17.8.801(20)(a) would be amended by modifying the definition of "major modification," adding NO_x as an ozone precursor pollutant when NO_x emissions exceed a significance threshold. This revision is consistent with the federal definition of "major modification" in 40 CFR 51.166(b)(2)(ii).

ARM 17.8.801(22)(b) would be amended by modifying the definition of "major stationary source," adding NO_x as an ozone precursor pollutant thereby triggering consideration of a source as "major" for ozone when the source emits or has the potential to emit 100 tons per year of NO_x. This revision is consistent with the federal definition of "major stationary source"

in 40 CFR 51.166(b)(1)(ii).

ARM 17.8.801(25) would be amended by adding a definition of the term “nitrogen oxides or NO_x,” defining it as the sum of nitric oxide and nitrogen dioxide in the flu gas or emission point.

ARM 17.8.801(27)(a) would be amended by modifying the definition of “significant.” The SIP revision would add a significance level of 40 tons per year of NO_x as a precursor for ozone. We propose to find that these revisions are consistent with the federal definition of “significant” in 40 CFR 51.166(b)(23)(i). The State also proposed to amend this definition by substituting the term “nitrogen oxides” for “nitrogen dioxide (NO₂)” as a precursor for PM_{2.5} formation. The use of “nitrogen dioxide (NO₂)” was a mistake when the definition was adopted in September 2011. The State intended to use the term “nitrogen oxides,” which include the sum of nitric oxide and nitrogen dioxide in the flue gas or emission point because they are precursors to the formation of PM_{2.5}, and the State is proposing to correct that mistake. The State is also proposing to delete the symbol “SO₂” from the definition so that it is consistent with the Federal definition. EPA will act on the changes with respect to PM_{2.5} when we act on the August 15, 2012 submittal.

ARM 17.8.818(7)(a)(vi) would be amended to add that a net increase of 100 tons per year of NO_x, as an ozone precursor pollutant, triggers an ambient impact analysis. This revision is consistent with the footnote related to 40 CFR 51.166(i)(5)(i)(f) in the federal regulations.

The State has not adopted a definition of “regulated NSR pollutant,” but instead continues to use the prior phrase “pollutant subject to regulation under the CAA” in its regulations to identify pollutants subject to PSD requirements. In support thereto, the State has

provided a statement of basis indicating that it understands that “EPA found Montana’s PSD rules for ozone inadequate because the rules do not address NO_x as a precursor pollutant for ozone,” and asserting that the “proposed amendments in this notice would address EPA’s concerns and make Montana’s rules for PSD permits adequate to implementing the 1997 8-hour ozone NAAQS.” The State further explains that:

Generally, the proposed amendments to the rules would add NO_x as a precursor pollutant that contributes to the formation of ozone. The department and applicants for permits to construct or modify major sources would be required to analyze the applicability of PSD requirements based on NO_x as a precursor to ozone.

Thus, we understand this to mean that the State interprets the phrase “pollutant subject to regulation under the CAA” to include NO_x as a precursor to ozone, consistent with the application of Regulated NSR Pollutant in the federal regulations. Based on this explanation and Montana’s proper revision of the other relevant PSD provisions described above, we therefore propose to find that Montana’s regulations appropriately regulate NO_x as an ozone precursor by requiring sources to analyze PSD applicability as to ozone based on the sources’ NO_x emissions.

The requirements included in Montana’s PSD program, as specified in ARM 17.8.801 and 17.8.818, are substantively the same as the federal provisions. As part of EPA’s review of the Montana submittal, EPA performed a line-by-line review of the proposed revisions and has determined that they are consistent with the program requirements for the preparation, adoption and submittal of implementation plans for the Prevention of Significant Deterioration of Air Quality, as set forth at 40 CFR 51.166.

V. What Action is EPA Taking Today?

EPA is proposing to approve the revisions to the ARM 17.8.801 and 17.8.818 as outlined in Section IV of this rulemaking and as submitted to EPA by the State of Montana on June 4, 2013.

VI. Statutory and Executive Orders Review

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact in a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq*

Dated: September 19, 2014.

Shaun L. McGrath,
Regional Administrator,
Region 8.

[FR Doc. 2014-23108 Filed 09/26/2014 at 8:45 am; Publication Date: 09/29/2014]